

DATE: September 27, 2016

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In Re: )

[REDACTED] )

Claimant )

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) Claims Case No. 2016-CL-052003.2  
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)

**CLAIMS APPEALS BOARD  
RECONSIDERATION DECISION**

**DIGEST**

The interpretation of a statute by the agency charged with its implementation, is entitled to deference and should be sustained if it is a reasonable interpretation. It is a well-established rule that a claim may be allowed only for an expense authorized by statute or regulation.

**DECISION**

The surviving spouse of a deceased member of the United States Army requests reconsideration of the August 16, 2016, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2016-CL-052003. In that case, this Office denied the surviving spouse's claim for the member's arrears of retired pay.

**Background**

The member retired on October 1, 1993. On January 22, 2003, the member submitted a DFAS-CL Form 5890/2, *Designation of Beneficiary Information*. On this form the member checked the box "Legal Order of Precedence," thus designating his spouse. On June 24, 2014, the member designated that his arrears of retired pay be paid in equal 50% shares to his son and daughter. On July 13, 2015, the member died.

The surviving spouse claimed the arrears of pay. However, the Defense Finance and Accounting Service (DFAS) denied her claim because the member had designated his son and daughter to receive the arrears of pay. In the appeal decision, the DOHA adjudicator upheld DFAS's determination to pay the member's designated beneficiaries.

In her reconsideration request, the surviving spouse agrees with the detailed presentation of the facts the DOHA adjudicator set forth in the appeal decision. However, she continues to assert that she is entitled to the arrears of pay based on court documentation reflecting her entitlement to the joint property and estate of the member, and a quick claim deed executed by her step-children purporting to award her the arrears of pay.

### Discussion

It is a well-established rule that a claim may be allowed only for an expense authorized by statute or regulation. *See* DOHA Claims Case No. 2012-CL-070601.2 (October 16, 2012); and DOHA Claims Case No. 05021409 (March 30, 2005). When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action. *See* DOHA Claims Case No. 2011-CL-020701.2 (May 19, 2011); and DOHA Claims Case No. 05021409, *supra*. Statutory provisions with unambiguous and specific directions may not be interpreted in any manner that will alter or extend their meaning. The interpretation of a statutory provision, as expressed in the implementing regulations by the agency responsible for execution of the statute, is entitled to great deference and will be sustained and deemed consistent with Congressional intent unless found to be arbitrary, capricious, an abuse of discretion or contrary to the statutory purpose. *See* DOHA Claims Case No. 2011-CL-020701.2, *supra*; and DOHA Claims Case No. 2010-CL-071901.2 (August 31, 2010); and DOHA Claims Case No. 08020701 (February 28, 2008).

The settlement of the final pay accounts of deceased members is governed by 10 U.S.C. § 2771. Subsection (a) provides for payment of the amount due to the person or persons surviving the member in the following order of precedence:

- (1) Beneficiary designated by him in writing to receive such an amount, if the designation is received before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.
- (2) Surviving spouse.
- (3) Children and their descendants, by representation.
- (4) Father and mother in equal parts or, if either is dead, the survivor.
- (5) Legal representative.
- (6) Person entitled under the law of the domicile of the deceased member.

The implementing regulations for this statute are found in Chapter 30, Volume 7B of the DoD 7000.14-R, the Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy and Procedures—Retired Pay. Paragraph 300204(A) restates the order of precedence set forth under 10 U.S.C. § 2771. Paragraph 200204(B) states that a retired member may change a beneficiary previously designated if the change is in writing and received by the Military Department concerned before the retired member's death. Both the statute and regulation clearly state that payments made pursuant to 10 U.S.C. § 2771 bar recovery by any other person of the amount paid.

On June 24, 2014, the member designated his son and daughter to receive any arrears of his retired pay that might be due at his death. The fact that the surviving spouse has court documentation reflecting her entitlement to the joint property and estate of her late husband, and a quick claim deed executed by her step-children purporting to award her his arrears of pay, does not serve to change the mandatory requirements of the cited statute, nor constitute the surviving spouse a designated beneficiary within the purview of the law and applicable regulations. *See* Comptroller General decision B-142316, Apr. 6, 1960. As explained by the adjudicator in the appeal decision, in setting forth the order of precedence of persons to whom payment may be made, 10 U.S.C. § 2771(a) lists as the second class the surviving spouse. However, since a member's designated beneficiary takes precedence over a surviving spouse, there is no authority to allow payment to the member's spouse.

### **Conclusion**

For the reasons stated above, the claimant's request for reconsideration is denied. In accordance with Department of Defense Instruction 1340.21 ¶ E7.11, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

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Jean E. Smallin  
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

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Catherine M. Engstrom  
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

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Natalie Lewis Bley  
Member, Claims Appeals Board